

**MEMORANDUM OF AGREEMENT
NAT-1-1427**

BETWEEN THE

**FEDERAL AVIATION ADMINISTRATION
DEPARTMENT OF TRANSPORTATION
UNITED STATES OF AMERICA**

AND THE

**DIRECTORATE OF CIVIL AVIATION
REPUBLIC OF KENYA**

WHEREAS, the Federal Aviation Administration (FAA) of the Department of Transportation of the United States of America is directed to encourage the development of civil aeronautics and the safety of air commerce, and is authorized to furnish on a reimbursable or non-reimbursable basis to foreign governments certain technical assistance to that end; and

WHEREAS, the Kenya Directorate of Civil Aviation (KDCA) has requested that such technical assistance be provided;

NOW THEREFORE, the FAA and the KDCA, collectively referred to herein as the parties, mutually agree as follows:

ARTICLE I—OBJECTIVE

A. This Memorandum of Agreement (the Agreement) establishes the terms and conditions under which the FAA may provide technical assistance to the KDCA in developing and modernizing its civil aviation infrastructure in the managerial, operational and technical areas. For this purpose, the FAA shall, subject to the availability of appropriated funds and necessary resources, provide personnel, resources, and related services to assist the KDCA to the extent called for in the annexes and appendices to this Agreement.

B. The FAA's ability to furnish the full scope of technical assistance provided for under this Agreement depends on the use of the systems and equipment in Kenya that are similar to those used by the FAA in the U.S. National Airspace System. To the extent that other systems and equipment are used in Kenya, the FAA may not be able to support those other systems and equipment under this Agreement.

ARTICLE II—IMPLEMENTATION

A. Specific technical assistance in areas of personnel, training, equipment, or services to be provided by the FAA for the KDCA shall be delineated in annexes and appendices to this Agreement. When signed by the parties, such annexes and appendices shall become part of this Agreement. Such annexes and appendices shall contain a description of the technical assistance to be performed by the FAA, the personnel and other resources required to accomplish the tasks, the estimated costs, implementation plans, and duration.

B. The designated office at the FAA for the coordination and management of this Agreement, and where all requests for services under this Agreement should be made, is:

Federal Aviation Administration
Office of International Aviation, AIA-300
800 Independence Ave., S.W.
Washington, D.C. 20591

Telephone no. (202) 267-8168
Fax no. (202) 267-5032

ARTICLE III—DESCRIPTION OF SERVICES

A. The technical assistance provided by the FAA at the request of the KDCA may include, but is not necessarily limited to, the following:

1. Providing technical and managerial expertise to assist the KDCA in developing, improving, and operating its civil aviation infrastructure, standards, procedures, policies, training, and equipment;
2. Providing training for KDCA personnel in the United States or in Kenya;
3. Inspecting and calibrating KDCA-owned or -operated equipment and air navigation facilities; and
4. Providing resources, logistical support, and equipment for air navigation facilities.

B. Technical assistance in these and other areas, as mutually agreed to, may be accomplished by appropriate short- and long-term in-country assignments or by other assistance offered by the FAA.

ARTICLE IV—STATUS OF FAA PERSONNEL

A. The FAA shall assign personnel to perform the services agreed upon in this Agreement. The personnel assigned may be the employees of the FAA or another U.S.

government agency, or a contractor to the FAA. U.S. Government personnel assigned to any activity shall retain their status as U.S. Government employees. The supervision and administration of the personnel shall be in accordance with the policies and procedures of the FAA as an agency of the U.S. Government.

B. U.S. Government personnel assigned to perform work under an annex or appendix to this Agreement shall be accorded the same privileges and immunities as are accorded to the administrative and technical personnel of the U.S. Embassy under the Vienna Convention on Diplomatic Relations of 1961. Such personnel shall not, however, be considered members of the Embassy staff by virtue of their enjoyment of such privileges and immunities.

ARTICLE V—HOST PARTY SUPPORT

A. The support by the KDCA necessary for accomplishing the FAA technical assistance shall be in accordance with pertinent FAA or other U.S. regulations, rules, or procedures provided that such laws, rules, regulations, or procedures are not in conflict with Kenya's laws, rules and regulations. The KDCA also shall provide such additional support as may be set forth in each annex or appendix.

B. If for any reason the KDCA is unable to provide fully the support specified in each annex or appendix, or if the support provided is not equivalent to that prescribed in pertinent FAA or other U.S. regulations, rules, or procedures, the FAA shall arrange for the support and charge the costs for such support to the KDCA. Prior to taking any action to obtain the support specified in each annex or appendix, the FAA will make reasonable efforts to consult with the KDCA as appropriate.

ARTICLE VI—FINANCIAL PROVISIONS

A. The KDCA shall reimburse the FAA, in accordance with the provisions set forth in this Agreement and its annexes and appendices, for all costs (including administrative overhead charges) associated with the technical assistance provided by the FAA. In the event of a termination by either party under Article X of this Agreement, the KDCA shall pay all costs incurred by the FAA:

1. Prior to the date of such termination; and
2. During the 120-day close-out period.

B. Each annex or appendix shall describe the specific financial arrangements for the technical assistance to be provided. However, all financial arrangements shall be subject to the following:

1. Payment of bills shall be due within sixty (60) days from date of billing. Payments shall be made in U.S. dollars and may be made by either check or electronic funds transfer. Checks shall be drawn on a U.S. bank and forwarded to the FAA at the address specified. Electronic funds transfers shall be credited to the FAA's account as follows: Federal Reserve Bank of New York, 021030004 Account Treas NYC (NB69001104) FAA. All payments shall include a reference to the assigned agreement number and billing number.

2. In the event that payment is not made within sixty (60) days from the date of billing, U.S. Treasury Department regulations prescribe and require the FAA to assess late payment charges—i.e., interest, penalties, and administrative handling charges—in subsequent billings. These late charges shall be assessed for each additional thirty (30) day period, or portion thereof, that payment is not received. The KDCA shall pay any such late charges.

C. Agreement number NAT-1-1427 has been assigned by the FAA to identify this technical assistance project and shall be referenced in all correspondence and bills related to this Agreement.

ARTICLE VII—LIABILITY

The KDCA, on behalf of the Government of Kenya, agrees to defend any suit brought against the Government of the United States, the FAA, or any instrumentality or officer of the United States arising out of work performed under this Agreement or its annexes and appendices. The KDCA, on behalf of the Government of Kenya, further agrees to hold the United States, the FAA, or any instrumentality or officer of the United States harmless against any claim by the Government of Kenya, or by any agency thereof, or by third persons for personal injury, death, or property damage arising out of work performed under this Agreement or its annexes and appendices.

ARTICLE VIII—AMENDMENTS

This Agreement or its annexes or appendices may be amended by mutual consent of the parties. The details of any such amendment shall be memorialized by written agreement signed by both parties.

ARTICLE IX—RESOLUTION OF DISAGREEMENTS

Any disagreement regarding the interpretation or application of this Agreement or its annexes and appendices shall be resolved by consultations between the parties and shall not be referred to any international tribunal or third party for settlement.

ARTICLE X—ENTRY INTO FORCE AND TERMINATION

A. This Agreement shall enter into force on the date of the last signature and shall remain in force until terminated.

B. This Agreement or its annexes or appendices may be terminated at any time by either party by providing sixty (60) days notice in writing to the other party. Termination of this Agreement shall not affect existing obligations of the KDCA under Articles IV, VI, VII, and IX. The FAA shall have one hundred and twenty (120) days to close out its activities following termination of this Agreement or its annexes or appendices. Termination of this Agreement also shall terminate all annexes and appendices subsequently concluded by the parties pursuant to this Agreement.

ARTICLE XI—SIGNATURE IN COUNTERPARTS

To facilitate execution, this Agreement or its annexes or appendices may be executed in as many counterparts as may be required. It shall not be necessary that the signature of or on behalf of each party appear on each counterpart, but it shall be sufficient that the signature of or on behalf of each party appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement.

ARTICLE XII—AUTHORITY

The FAA and the KDCA agree to the provisions of this Agreement as indicated by the signature of their duly authorized representatives.

FEDERAL AVIATION ADMINISTRATION
DEPARTMENT OF TRANSPORTATION
UNITED STATES OF AMERICA

BY:


John Hancock


TITLE: Acting Director, Office of
International Aviation

DATE:

11/02/2001

DIRECTORATE OF
CIVIL AVIATION
REPUBLIC OF KENYA

BY:


C. A. Kuto

TITLE: Director of Civil Aviation

DATE:

November 2, 2001